



April 12, 1999

Ms. Lilia Ledesma-Gonzalez  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR99-1010

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123595.

The City of McAllen (the "city") received a request for a personnel file of a designated fireman, investigation reports regarding an accident which occurred on a particular date, and a complete copy of the City Accident Review Board's investigation of the same accident. You assert that "there is no record of an investigation by the Accident Review Board of the April 24, 1994 accident, as the Board was inactive at that time." You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

You assert that the personnel file is exempt from public disclosure and may not be released pursuant to section 143.089(g) of the Government Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, either constitutional, statutory or by judicial decision. Section 143.089 of the Government Code provides for the maintenance of a police civil service file and indicates what must be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause;  
or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a fire or police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in a fire or police department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. You assert that the requested information is in the fire department's file and is exempt from public disclosure pursuant to 143.089(g). No such confidentiality provision governs information that is maintained in the civil service file pursuant to section 143.089(a). Information maintained in the civil service files must generally be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law). We conclude that documents in the fire department's internal file must be maintained as confidential. We note, however, that some of the submitted documents are also required to be placed in the civil service file. In accordance with section 143.089(g), the department must refer the requestor to the civil service director so that he can request a copy of the documents maintained in the fire fighter's civil service file.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

*David Van Brunt Price*

David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID# 123595

Encl: Submitted documents

cc: Mr. Dale Kasofsky  
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(w/o enclosures)